

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN’S LAW CENTER,
et al.,

Plaintiffs,

vs.

OFFICE OF MANAGEMENT AND
BUDGET, *et al.*,

Defendants.

Civil Action No. 17-2458 (TSC)

PLAINTIFFS’ REQUEST FOR A STATUS CONFERENCE

Plaintiffs respectfully request that the Court convene a status conference in this matter to discuss Defendants’ compliance with the Court’s Memorandum Opinion and Order of March 4, 2019 (hereafter, collectively “Order”).¹

As the Court is aware, it entered summary judgment in Plaintiffs’ favor on March 4, 2019, and issued an Order stating that: “OMB’s stay of EEOC’s revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, 82 Fed. Reg. 43362) announcing the same are VACATED.” Dkt. No. 46. The Memorandum Opinion accompanying this Order also stated that “It is further ORDERED that the previous approval of the revised EEO-1 form shall be in effect.” Dkt. No. 45.

¹ Plaintiffs conferred with Defendants as required by Local Civil Rule 7(m) regarding this request. Defendants’ position is that “Defendants are working diligently to comply with the Court’s recent order and therefore believe that Plaintiffs’ request for a status conference is unnecessary at this time.”

Defendant EEOC previously had announced that the reporting period for the 2018 EEO-1 Report would open in early March, later refining the date to March 18, 2019.² Since the Court issued its Order, Plaintiffs have requested information about Defendants' plans for compliance from Defendants' counsel. Defendants have declined to provide any specific information. *See* Att. A. On Saturday March 16, 2019, Defendants' counsel emailed Plaintiffs' counsel stating that:

EEOC has informed us that it intends to post the following notice on its website either tomorrow evening or early Monday morning: "As it announced at the end of January, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 Component 1 data starting March 18, 2019 and ending May 31, 2019. The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible."

See Att. B.

On March 18, 2019, the EEOC opened the 2018 EEO-1 Survey for employer reporting.³

The EEOC also issued the following statement:

Statement on the 2018 EEO-1 Portal Opening for Component 1 Data

As it announced on February 1, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 **Component 1 data** starting March 18, 2019, and ending May 31, 2019. Instructions for filing are available here: <https://www.eeoc.gov/employers/eeo1survey/index.cfm>.

The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of

² EEOC, Press Release, "EEO-1 Survey for 2018 Will Open Early March 2019" (Feb. 1, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/2-1-19.cfm>.

³ EEOC, "2018 EEO-1 Survey", <https://www.eeoc.gov/employers/eeo1survey/>.

Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible.⁴

In short, EEOC has opened the 2018 EEO-1 reporting period only as to Component 1 data, not as to the Component 2 pay data that is the subject of the instant litigation and the Court's Order. Both before and after this action, Plaintiffs have requested information about EEOC's timeframe for compliance and plans for alerting the reporting community to the obligation to submit Component 2 pay data, but Defendants' counsel has not provided any information beyond the content of the notice. *See* Atts. A, B.

Defendants' delay in complying with the Court's order, and inability or unwillingness to provide any information about their plans to do so, is especially concerning because Defendants previously represented that it would take OMB "1 day" to "get Component 2 'live' should plaintiffs prevail in this case." *See* Att. C. Defendants made this representation while seeking Plaintiffs' consent to extend the summary judgment briefing schedule, in response to Plaintiffs' concerns that further delay could put the collection of 2018 data at risk. Defendant EEOC did not contradict OMB's representation at that time, and Defendants have not explained the inconsistency with their current actions in response to Plaintiffs' recent inquiries.

Accordingly, Defendants are out of compliance with the Court's Order. Moreover, in light of the deadline of May 31, 2019 for employers to submit their EEO-1 reports for 2018, further delay in opening reporting for Component 2 pay data, and the possibility of employers submitting Component 1 data without Component 2 pay data, risks logistical difficulties and gaps in employer compliance. Plaintiffs therefore respectfully request that the Court convene a

⁴ EEOC, "Statement on the 2018 EEO-1 Portal Opening for Component 1 Data", <https://www.eeoc.gov/employers/eeo1survey/statement-2018-opening.cfm> (emphasis in original).

status conference at its earliest possible convenience in order to obtain information regarding Defendants' plan for compliance with the Court's Order and to provide guidance regarding the Court's expectations for compliance.

Dated: March 18, 2019

Respectfully submitted,

/s/ Robin F. Thurston

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Attorneys for Plaintiffs

Attachment A

From: [Moore, Tamra \(CIV\)](#)
To: [Robin Thurston](#)
Cc: [Jeff Dubner](#)
Subject: RE: NWLC v. OMB, Civ. No. 17-2458
Date: Monday, March 11, 2019 3:25:52 PM

Robin,

I understand, and as soon as I have any information to report, you will be among the first to know.

Tamra

Tamra T. Moore
United States Department of Justice
Civil Division – Federal Programs Branch
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Washington, D.C. 20005
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Fax: (202) 616-8470

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From: Robin Thurston <rthurston@democracyforward.org>
Sent: Monday, March 11, 2019 10:38 AM
To: Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>
Cc: Jeff Dubner <jdubner@democracyforward.org>
Subject: Re: NWLC v. OMB, Civ. No. 17-2458

Hi Tamra,

Thank you for the email. Hope you had a nice weekend.

We would appreciate it if you would let us know asap if Defendants decide to attempt to make any changes to the current dates for releasing the survey and collecting EEO-1 reports.

Thanks,
Robin

On Fri, Mar 8, 2019 at 11:45 AM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote:

(removing Rachael, who is tied up on other matters for the time being)

Robin,

I wanted to get back to you about your email. Unfortunately, at this point, I do not have any

answers to the questions that you pose. Both agencies are still trying to figure out next steps. As soon as I have any additional information, I'll let you know.

Tamra

Tamra T. Moore
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From: Robin Thurston <rthurston@democracyforward.org>
Sent: Tuesday, March 05, 2019 11:01 AM
To: Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Jeff Dubner <jdubner@democracyforward.org>
Subject: NWLC v. OMB, Civ. No. 17-2458

Dear Tamra and Rachael,

I hope that you're well. I'm emailing about the Court's ruling yesterday in the NWLC v. OMB case. Given that the revised EEO-1 form (including Component 2) is now in effect and the pay data will be due on May 31st, we wanted to ensure that employers will be advised of this update. The EEO-1 survey is scheduled to post on March 18, 2019. (<https://www.eeoc.gov/employers/eeo1survey/index.cfm>). Based on the Court's ruling, we expect that the survey will include the Component 2 pay data collection. (As you previously relayed from OMB, that agency anticipated that it would take about one day to re-implement the pay data collection). Would you please confirm that this is correct?

What other steps will the government take to ensure that employers are aware of the renewed pay data reporting requirement?

All the best,
Robin

--
Robin Thurston
Senior Counsel
Democracy Forward Foundation
rthurston@democracyforward.org
(202) 701-1775

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--

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Attachment B

Robin Thurston

From: Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov>
Sent: Monday, March 18, 2019 12:41 PM
To: Robin Thurston
Cc: jdubner@democracyforward.org
Subject: RE: NWLC, et al. v. OMB, et al. — update

Robin,

The information that EEOC posted for employers on its website this morning is the only information that I have right now. EEOC is working hard to comply with the Court's order and "will provide further information as soon as possible." My understanding is that this includes providing specifics about collecting Component 2 pay data from employers.

As soon as I have any additional information, I will share it with you -- just as I did with EEOC's notice this past weekend.

Tamra

Tamra T. Moore
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From: Robin Thurston <rthurston@democracyforward.org>
Sent: Monday, March 18, 2019 12:09 PM
To: Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>
Cc: jdubner@democracyforward.org
Subject: Re: NWLC, et al. v. OMB, et al. — update

Tamra,

Thank you for responding. Can you provide us with more information about what Defendants are doing to comply with the Court's order? It would be helpful to have information about timing and about plans for alerting the reporting community to the renewed obligation to submit component 2 data --- especially now that employers will have begun submitting component 1 data. Absent specific information about plans for compliance we continue to believe that the Court's guidance is necessary at this point.

Jeff and I are available to talk this afternoon -- please let me know if you have more information to provide and/or when a good time to speak would be.

Thanks,
Robin

On Mon, Mar 18, 2019 at 11:55 AM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote:

Robin,

Please relay Defendants' position as follows: "Defendants are working diligently to comply with the Court's recent order and therefore believe that Plaintiffs' request for a status conference is unnecessary at this time."

Thanks,

Tamra

Tamra T. Moore

United States Department of Justice

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From: Robin Thurston <rthurston@democracyforward.org>

Sent: Monday, March 18, 2019 10:08 AM

To: Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>

Cc: jdubner@democracyforward.org

Subject: Re: NWLC, et al. v. OMB, et al. — update

Tamra,

Thank you for providing the information. We also noticed that as of this morning the EEO-1 reporting period has been opened, and the language has been posted on EEOC's website.

We view the decision to open the reporting period without including component 2 data, especially without a plan for when or how component 2 data will be collected, as being out of compliance with the Court order vacating the stay. As such, we intend to request a status conference at the Court's earliest convenience. Would you please let me know the government's position on this request by noon today?

Thanks,

Robin

On Sat, Mar 16, 2019 at 12:23 PM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote:

Robin,

EEOC has informed us that it intends to post the following notice on its website either tomorrow evening or early Monday morning: "As it announced at the end of January, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 Component 1 data starting March 18, 2019 and ending May 31, 2019. The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible."

Tamra

--

Robin Thurston

Senior Counsel

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--

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Attachment C

Robin Thurston

From: Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov>
Sent: Monday, December 3, 2018 4:11 PM
To: Robin Thurston
Cc: Jeff Dubner; Westmoreland, Rachael (CIV)
Subject: RE: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Robin,

I apologize (again) for the delay. I've heard back from OMB about your request to know how much time it will take OMB to get Component 2 "live" should plaintiffs prevail in this case. OMB said "1 day." We are waiting to hear back from EEOC – apparently the person who would have knowledge of this is out of the office today. But they will get back to me tomorrow.

Does any of this help?

Tamra

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From: Robin Thurston <rthurston@democracyforward.org>
Sent: Monday, December 03, 2018 12:50 PM
To: Moore, Tamra (CIV) <tammoores@CIV.USDOJ.GOV>
Cc: Jeff Dubner <jdubner@democracyforward.org>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>
Subject: Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Yes, that's the right framing of the question. Thanks for passing it along.

Robin

On Mon, Dec 3, 2018 at 12:32 PM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote:

Ah, ok. Let me pass that question along to both OMB and EEOC and get back to you with their respective responses. And to make sure that I fully understand your question - -plaintiffs want to know how long it would take to get component 2 "live" for employer filing purposes? Is that the correct framing of the question? If not, please feel free to reframe it in the wording that you think makes most sense. I'd hate to pass along the incorrect question.

Tamra T. Moore

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From: Robin Thurston <rthurston@democracyforward.org>

Sent: Monday, December 03, 2018 12:17 PM

To: Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>; Jeff Dubner <jdubner@democracyforward.org>

Cc: Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>

Subject: Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra and Rachael,

Thank you for the email and the information. We're talking with our clients, and will respond to your extension request later today. In the meantime, it would also be helpful to know whether the agencies have an estimate of how much time, if any, they would like to implement a court ruling in plaintiffs' favor. If we could signal that date to the Judge, that might alleviate some of our concern about time continuing to pass during a more prolonged briefing schedule.

Thanks very much,

Robin

On Mon, Dec 3, 2018 at 10:37 AM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote: